

AMENDED IN SENATE APRIL 16, 2004

SENATE BILL

No. 1568

Introduced by Senator Sher

February 19, 2004

An act to amend Sections ~~66604~~ 66633, 66637, 66638, 66639, 66640, and 66641.5 of, and to add ~~Sections~~ Section 66612 and ~~66638.5~~ to, the Government Code, relating to the San Francisco Bay Conservation and Development Commission.

LEGISLATIVE COUNSEL'S DIGEST

SB 1568, as amended, Sher. San Francisco Bay Conservation and Development Commission.

(1) Existing law establishes the area of jurisdiction of the San Francisco Bay Conservation and Development Commission.

This bill would authorize the commission to make grants.

This bill would require a person who is acting as an agent for a transferor of an interest in real property that is located within the commission's jurisdiction, or the transferor, if he or she is acting without an agent, to disclose to a prospective transferee, ~~when if~~ he or she has actual knowledge, the fact that the property is located within that jurisdiction, *as specified*.

(2) Existing law requires a person or governmental agency to secure a permit from the commission if the person or agency wishes to place fill in, to extract materials from, or to make any substantial change in use of, any water, land, or structure within the area of the commission's jurisdiction.

~~This bill would authorize the commission to revoke a permit in whole or in part, would provide the grounds for complete or partial revocation,~~

~~and would provide procedures for challenging and enforcing the commission's revocation order.~~

Existing law authorizes the commission, and its executive director, to issue cease and desist orders in connection with activities that may require a permit or may be inconsistent with a permit, as specified. Existing law requires copies of the cease and desist order to be mailed to specified persons and agencies.

This bill would also require a copy of the cease and desist order to be sent by certified mail to the owner of the property on which the violation occurred.

(3) Existing law authorizes an aggrieved person to file with the superior court a petition for writ of mandate for review of a cease and desist order of the commission *or its executive director*, within 30 days after service of a copy of the order. Failure to file the specified action does not preclude a party from challenging the order in any judicial proceeding brought to enforce the order or for other civil remedies.

~~This bill, instead, would extend these provisions to include civil penalty orders and permit revocation orders issued by the commission,~~ would require the person to file the specified action within 30 days after service of the order, and would provide that failure to file the action precludes the party from challenging the order in all circumstances. *The bill would provide that the 30 days may be extended by written agreement signed by both the executive director and an aggrieved party.*

(4) *Existing law requires the Attorney General, upon request of the commission, to petition the superior court for an injunction, as specified, if a person fails to comply with a cease and desist order issued by the commission.*

This bill would also require the Attorney General, upon request of the commission, to petition the superior court for an injunction, if a person fails to comply with a permit, a cease and desist order issued by the executive director, or other specified requirements.

(5) Existing law imposes civil penalties in specified amounts for violations of provisions relating to San Francisco Bay conservation and development.

This bill would increase the amounts for those penalties and would impose civil penalties for negligent violations.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. ~~Section 66604 of the Government Code is amended to read:~~

~~66604. The Legislature further finds and declares that in order to protect the present shoreline and body of the San Francisco Bay to the maximum extent possible, it is essential that the commission be empowered to issue or deny permits, after public hearings, for any proposed project that involves placing fill, extracting materials, or making any substantial change in use of any water, land, or structure within the area of the commission's jurisdiction, and those permits should run with the land.~~

SEC. 2. ~~Section 66612 is added to the Government Code, to read:~~

66612. (a) A person who is acting as an agent for a transferor of an interest in real property that is located within the commission's jurisdiction, or the transferor, if he or she is acting without an agent, shall disclose to a prospective transferee the fact that the property is located within the commission's jurisdiction, if the transferor, or the transferor's agent, has actual knowledge that the property is within the commission's jurisdiction.

(b) This section applies to a transfer of any property interest, including, but not limited to, transfer of a title, a lease, an option to buy, or a license.

(c) The disclosure required under this section shall occur as soon as practicable before *or upon* the execution of a contract to transfer the property interest or, if no contract is executed, before the transfer of the interest.

(d) Section 1103.13 of the Civil Code applies to the disclosure required under this section.

(e) The requirement in this section for disclosure does not limit or abridge any obligation for disclosure created by any other law or that may exist in order to avoid fraud, misrepresentation, or deceit in the transfer transaction.

SEC. 3. ~~Section 66638.5 is added to the Government Code, to read:~~

~~66638.5. (a) The commission may revoke a permit issued by the commission in whole or in part.~~

~~(b) The grounds for a complete or a partial revocation shall include one or more of the following:~~

1 ~~(1) The intentional or negligent inclusion of inaccurate,~~
2 ~~erroneous, or incomplete information in connection with the~~
3 ~~application for a permit or amendment of a permit, if the~~
4 ~~commission finds that the information was material to the issuance~~
5 ~~or approval of the permit or amendment.~~

6 ~~(2) The failure of the applicant to comply fully with a provision~~
7 ~~of applicable law pertaining to the need to provide notice of a~~
8 ~~pending application for a permit or an amendment of a permit to~~
9 ~~members of the public, if the commission finds that the views of~~
10 ~~persons not notified were not made known to the commission and~~
11 ~~that those views could have caused the commission to impose~~
12 ~~additional or different conditions upon the issuance or approval of~~
13 ~~a permit or amendment, or to deny the application.~~

14 ~~(3) Two or more serious violations of a single permit within a~~
15 ~~period of five years.~~

16 ~~(c) The commission shall adopt regulations establishing the~~
17 ~~procedure for revocation of a permit. The procedure shall require~~
18 ~~the commission to provide to the permitholder a written notice that~~
19 ~~explains the basis for the revocation, and shall ensure, unless the~~
20 ~~permit has been repeatedly violated, as determined by the~~
21 ~~commission, that an opportunity is provided to correct any~~
22 ~~deficiency.~~

23 ~~(d) If a person or entity to whom a permit revocation order is~~
24 ~~issued chooses to challenge the legality of the order, the person or~~
25 ~~entity, within 90 days after service of the order, shall file with the~~
26 ~~superior court a petition for a writ of mandate pursuant to Section~~
27 ~~1094.5 of the Code of Civil Procedure. If no aggrieved party~~
28 ~~petitions for a writ of mandate within the time provided by this~~
29 ~~subdivision, a permit revocation order issued by the commission~~
30 ~~is not subject to further review by any court or agency, except that~~
31 ~~the commission may grant review of its own permit revocation~~
32 ~~order after the expiration of the time limit set by this upon a~~
33 ~~showing of good cause.~~

34 ~~(d) A person or entity who has had a permit revoked by the~~
35 ~~commission may not submit a new application for a permit or~~
36 ~~amendment to authorize the same or similar activity until one year~~
37 ~~has passed from the effective date of the permit revocation order,~~
38 ~~unless the commission specifies a shorter period in the revocation~~
39 ~~order.~~

40 ~~SEC. 4.—~~

1 *SEC. 2. Section 66633 of the Government Code is amended to*
2 *read:*

3 66633. The commission may:

4 (a) Accept grants, contributions, and appropriations from ~~any~~
5 a public agency, private foundation, or individual.

6 (b) Appoint committees from its membership and appoint
7 advisory committees from other interested public and private
8 groups.

9 (c) Contract for or employ any professional services required
10 by the commission or for the performance of work and services
11 ~~which~~ *that* in its opinion cannot satisfactorily be performed by its
12 officers and employees or by other federal, state, or local
13 governmental agencies.

14 (d) Sue and be sued in all actions and proceedings and in all
15 courts and tribunals of competent jurisdiction, including
16 prohibitory and mandatory injunctions to restrain violations of this
17 title.

18 (e) ~~Do~~ *Make grants and do* any and all other things necessary
19 to carry out the purposes of this title.

20 *SEC. 3. Section 66637 of the Government Code is amended to*
21 *read:*

22 66637. (a) When the executive director determines that ~~any~~
23 a person or governmental agency has undertaken, or is threatening
24 to undertake, ~~any~~ *an* activity that (1) may require a permit from the
25 commission without securing a permit; or (2) may be inconsistent
26 with ~~any~~ a permit previously issued by the commission, the
27 executive director may issue an order directing that person or
28 governmental agency to cease and desist.

29 (b) ~~Any~~ A cease and desist order issued by the executive
30 director may be subject to ~~such~~ *the* terms and conditions ~~as~~ *that* the
31 executive director may determine are necessary to ensure
32 compliance with ~~the provisions of~~ this title, including the
33 immediate removal of any fill or other material where that removal
34 is necessary to avoid irreparable injury to ~~any~~ *an* area within the
35 jurisdiction of the commission pending action by the commission
36 under Section 66638.

37 (c) ~~Any~~ A cease and desist order issued by the executive
38 director shall become null and void 90 days after issuance.

39 (d) A cease and desist order issued by the executive director
40 shall be effective upon the issuance thereof, and copies shall be

1 served forthwith by certified mail upon the person or
2 governmental agency being charged with the actual or threatened
3 violation of this title. *A copy of the cease and desist order shall also*
4 *be sent by certified mail to the owner of the property on which the*
5 *violation occurred.*

6 SEC. 4. Section 66638 of the Government Code is amended to
7 read:

8 66638. (a) When the commission, after public hearing,
9 determines that ~~any~~ a person or governmental agency has
10 undertaken, or is threatening to undertake, ~~any~~ an activity that (1)
11 requires a permit from the commission without securing a permit,
12 or (2) is inconsistent with ~~any~~ a permit previously issued by the
13 commission, the commission may issue an order requiring ~~such~~
14 ~~the~~ the person or governmental agency to cease and desist.

15 (b) ~~Any~~ A cease and desist order issued by the commission may
16 be subject to ~~such~~ the terms and conditions ~~as that~~ the commission
17 may determine are necessary to insure compliance with ~~the~~
18 ~~provisions of~~ this title, including immediate removal of any fill or
19 other material or the setting of a schedule within which steps must
20 be taken to obtain a permit pursuant to this title.

21 (c) Notice of the public hearing on a proposed cease and desist
22 order shall be given to all affected persons and agencies and ~~such~~
23 ~~orders~~ the order shall be effective and final as to the commission
24 upon issuance thereof. Copies shall be served forthwith by
25 certified mail upon the person or governmental agency being
26 charged with the actual or threatened violation of this title and
27 upon other affected persons and agencies who appeared at the
28 hearing and requested a copy. *A copy of the cease and desist order*
29 *shall also be sent by certified mail to the owner of the property on*
30 *which the violation occurred.*

31 SEC. 5. Section 66639 of the Government Code is amended
32 to read:

33 66639. (a) Within 30 days after service of a copy of a cease
34 and desist order issued by the executive director under Section
35 ~~66637 or the commission under Section 66638, or of a civil penalty~~
36 ~~order or permit revocation order issued by the commission, 66637,~~
37 an aggrieved party may challenge the order by filing with the
38 superior court a petition for writ of mandate for review thereof
39 pursuant to Section 1094.5 of the Code of Civil Procedure. An
40 aggrieved party who does not file that action may not challenge the

1 reasonableness and validity of the order of the executive director
2 ~~or the commission~~ in all circumstances, including, but not limited
3 to, any judicial proceeding brought to enforce the order or for other
4 civil remedies.

5 (b) The evidence before the court in a proceeding to review an
6 order ~~of the commission~~ *issued by the executive director as*
7 *described in subdivision (a) shall consist of the record before the*
8 ~~commission~~ *that the executive director considered*, and in cases
9 where it is claimed that the findings are not supported by the
10 evidence, abuse of discretion is established only if the court
11 determines that the findings are not supported by substantial
12 evidence in the light of the whole record.

13 ~~SEC. 5.—~~

14 (c) *Within 30 days after service of a copy of a cease and desist*
15 *order issued by the commission under Section 66638, an aggrieved*
16 *party may challenge the order by filing with the superior court a*
17 *petition for writ of mandate for review thereof, pursuant to Section*
18 *1094.5 of the Code of Civil Procedure. An aggrieved party who*
19 *does not file that action may not challenge the reasonableness and*
20 *validity of the order of the commission in all circumstances,*
21 *including, but not limited to, any judicial proceeding brought to*
22 *enforce the order or for other civil remedies.*

23 (d) *The evidence before the court in a proceeding to review an*
24 *order of the commission described in subdivision (c) shall consist*
25 *of the record before the commission, and in cases where it is*
26 *claimed that the findings are not supported by the evidence, abuse*
27 *of discretion is established only if the court determines that the*
28 *findings are not supported by substantial evidence in the light of*
29 *the whole record.*

30 (e) *The 30 days within which an aggrieved party may file a*
31 *challenge to an order, pursuant to subdivisions (a) and (c), may be*
32 *extended by written agreement signed by both the executive*
33 *director and an aggrieved party.*

34 SEC. 6. Section 66640 of the Government Code is amended
35 to read:

36 66640. (a) Upon the failure of a person to comply with a
37 permit, a cease and desist order, ~~or a permit revocation order~~ issued
38 by the *executive director or the commission*, or with any provision
39 of this title, the Attorney General, upon request of the commission,
40 shall petition the superior court for the issuance of a preliminary

1 or permanent injunction, or both, as may be appropriate,
2 restraining the person or persons from continuing any activity in
3 violation of the permit, order, or provision of this title.

4 (b) The evidence before the court shall consist of the record
5 before the *executive director or the commission*, and any other
6 relevant evidence that, in the judgment of the court, should be
7 considered to effectuate and implement the policies of this title. In
8 every case brought under this section, the court shall exercise its
9 independent judgment on the evidence.

10 (c) The court shall issue an order directing defendants to appear
11 before the court at a time and place certain and show cause why the
12 injunction should not be issued. The court may grant any
13 prohibitory or mandatory relief that may be warranted.

14 (d) The court may stay the operation of the cease and desist
15 order after notice ~~of the commission~~ *to the executive director or the*
16 *commission, whichever initially issued the order*, and hearing. The
17 stay may be imposed or continued only if it is not against the public
18 interest.

19 ~~SEC. 6.—~~

20 SEC. 7. Section 66641.5 of the Government Code is amended
21 to read:

22 66641.5. (a) In addition to any other penalties, any person or
23 entity who violates this title is subject to a civil penalty of not to
24 exceed thirty thousand dollars (\$30,000). In determining the
25 amount of a civil penalty, the court shall consider the factors listed
26 in subdivision (a) of Section 66641.9.

27 (b) In addition to any other penalties, any person or entity who
28 intentionally and knowingly undertakes any activity requiring a
29 permit pursuant to subdivision (a) of Section 66632 without that
30 permit, or who intentionally and knowingly violates any term or
31 condition of any permit issued by or on behalf of the commission,
32 is subject to a civil penalty of not less than one hundred dollars
33 (\$100), nor more than ten thousand dollars (\$10,000), per day for
34 each day in which that violation occurs or persists.

35 (c) Except as provided in Section 818, whenever a person or
36 entity has intentionally and knowingly violated this title or any
37 term or condition of a permit issued by or on behalf of the
38 commission, the commission may maintain an action, in addition
39 to the actions authorized pursuant to subdivisions (a) and (b), for
40 the recovery of exemplary damages. In determining the amount to

1 be awarded, the court shall consider the amount of damages
2 necessary to deter further violations.

3 (d) In addition to any other penalties, a person or entity who
4 negligently undertakes an activity requiring a permit pursuant to
5 subdivision (a) of Section 66632 without that permit, or who
6 negligently violates any term or condition of any permit issued by
7 or on behalf of the commission, is subject to a civil penalty of not
8 less than fifty dollars (\$50) nor more than five thousand dollars
9 (\$5,000) per day for each day in which that violation occurs or
10 persists.

11 (e) Civil liability may be administratively imposed by the
12 commission in accordance with Section 66641.6 on any person or
13 entity for any violation of this title or any term or condition of a
14 permit issued by or on behalf of the commission in an amount that
15 shall be not less than ten dollars (\$10), nor more than two thousand
16 dollars (\$2,000), for each day in which that violation occurs or
17 persists, but the commission may not administratively impose a
18 fine of more than thirty thousand dollars (\$30,000) for a single
19 violation.

20 (f) Any moneys recovered by the commission pursuant to this
21 section shall be deposited in the fund established and administered
22 pursuant to Section 66647.

